



It is therefore **ORDERED** that Oldendorff's claims for breach of contract, breach of express warranties, breach of implied warranties, and breach of the implied warranty of fitness for a particular purpose are hereby dismissed. Oldendorff may not assert these contractual claims against Unipet, a party with which it has no contractual privity. *See Berge-Helene Ltd. v. GE Oil & Gas, Inc.*, 896 F. Supp. 2d 582, 603 (S.D. Tex. 2012).

It is further **ORDERED** that Oldendorff's claims for fraud, fraudulent inducement, misrepresentation, negligent misrepresentation, civil conspiracy and intentional conduct are hereby dismissed. Oldendorff has not pled fraud with particularity and has failed to state a claim for which relief may be granted in that there is no showing of a specific representation made by Unipet that was justifiably relied on by Oldendorff.

It is further **ORDERED** that Oldendorff's claims negligence and products liability may proceed against Unipet. These tort claims were not invalidly assigned and are not barred in their entirety based on the economic loss rule.

It is further **ORDERED** that the issue of Oldendorff's claim for attorney's fees will be more fully developed at trial and a final ruling on this issue will be issued after that proceeding.

## **2. Unipet's Motion to Dismiss TPRI's Cross-Claim**

Unipet's Motion to Dismiss TPRI's Cross-Claim is **GRANTED IN PART** with regards to TPRI's common law indemnification and implied warranty claims and **DENIED IN PART** with regards to TPRI's claims for breach of contract/breach of express warranty.

It is therefore **ORDERED** that TPRI's claim for common law indemnification is hereby dismissed as it is precluded by its contract with Unipet.

It is further **ORDERED** that TPRI's cross-claim for breach of implied warranties is hereby dismissed. The Court withdraws its prior opinion regarding the validity of Unipet's

disclaimer of implied warranties. Unipec's disclaimer was conspicuous and valid and bars TPRI implied warranty claims.

It is further **ORDERED** that TPRI's claim for breach of contract/breach of express warranty may proceed to trial.

**3. Unipec's Motion to Dismiss TSUS's Cross-Claims**

Unipec's Motion to Dismiss TSUS's Cross-Claim is **GRANTED**. Unipec had no contract with Unipec and therefore TSUS may not bring contractual claims against Unipec and TSUS's claim for common law indemnification is precluded by Unipec's contract with TPRI. It is therefore **ORDERED** that TSUS's cross-claims against Unipec are hereby dismissed in their entirety.

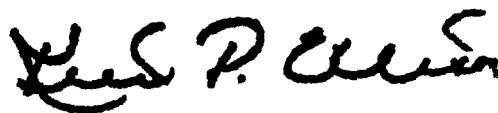
**4. TPRI's Motion for Partial Summary Judgment**

TPRI's Motion for Partial Summary Judgment is **GRANTED**. It is therefore **ORDERED**, that TPRI's warranty disclaimer found in Clause 10 within the governing sales contract's terms and conditions was conspicuous and valid.

It is further **ORDERED** that Plaintiff's claims against TPRI are hereby dismissed in their entirety, save and except Plaintiff's sole remaining claim for alleged breach of express warranty that the fuel in question conformed to the grade stated in the sales contract.

It is further **ORDERED**, that Plaintiff's recoverable damages as against TPRI are capped at \$267,036.50 pursuant to clause 11 of the sale contract terms and conditions.

Signed this 5<sup>th</sup> day of June, 2015



U.S. District Judge Keith P. Ellison